

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 95-0014 LH

SEBASTIAN L. ECCLESTON,

Defendant.

MEMORANDUM OPINION AND ORDER


This matter is before the Court on Defendant's Petition to Amend Judgement Pursuant to Rule 36 of the Federal Rules of Criminal Procedure & Any Other Applicable Rule (CR Doc. 180) ("motion"). Defendant asks the Court to expunge a 2009 letter from the Court to the Bureau of Prisons for lack of jurisdiction and to enter an order crediting Defendant's federal sentence for time served in state custody. The Court will deny Defendant's motion.

No relief is available under rule 36 of the Federal Rules of Criminal Procedure on Defendant's motion. The rule permits "correction in the formal record of a gap or error 'arising from oversight or omission.' " *Pattiz v. Schwartz*, 386 F.2d 300, 303 (8th Cir. 1968) (analyzing claim under Fed. R. Civ. P. 60(a)), *cited in United States v. Morales*, 108 F.3d 1213, 1224 (10th Cir. 1997); *and see Azure v. Gallegos*, 97 F. App'x 240, 244 (10th Cir. 2004) (rejecting claim for alleged error regarding consecutive sentence as unavailable under rule 36); *United States v. Werber*, 51 F.3d 342, 347, 348 and n. 16 (2d Cir. 1995) (allowing court to correct transcription errors under rule 36, but not "error[s] of law"), *cited in United States v. Blackwell*, 81 F.3d 945, 949 (10th Cir. 1996). Even assuming the accuracy of Defendant's allegations, judicial actions taken in the absence of jurisdiction and a failure to award proper credit for time served are clearly not " 'clerical mistake[s]'

... appear[ing] on the face of the record, leaving little need for adversary proceedings to clarify the issue.” *Werber*, 51 F.3d at 347. The Court will deny relief under rule 36. Furthermore, because Defendant has previously sought habeas corpus relief from his conviction and sentence, the Court will deny his request to consider granting relief under “any other applicable rule.”

IT IS THEREFORE ORDERED that the Clerk is directed to correct Defendant’s address on the docket pursuant to the notice of change of address (Doc. 195);

IT IS FURTHER ORDERED that Defendant’s Petition to Amend Judgement Pursuant to Rule 36 of the Federal Rules of Criminal Procedure & Any Other Applicable Rule (CR Doc. 180) is DENIED.



SENIOR UNITED STATES DISTRICT JUDGE